

REMARKS

Claims 1-26 are pending. Claims 25 and 26 have been rewritten in independent form.

In the final Office action, claims 1-24 were rejected as unpatentable over U.S. Patent Application No. 2004/0015427 (Camelio) in view of U.S. Patent Application No. 2002/0156709 (Andrus).

Claims 1-14 also were rejected as directed to non-statutory subject matter.

As discussed below, applicant respectfully requests reconsideration.

The Pending Claims

The employment patterns of artists typically do not lend themselves to existing pension or other retirement plans because artists often do not work full-time and, therefore, are not eligible for pension benefits provided to full-time employees. Furthermore, although *investors* in works of art may be able to reduce their risk by investing in a diverse art portfolio, the artists themselves generally bear the full risk of their own personal success.

The present invention may allow an artist to diversify her risk by pooling her artistic creations with other artists' works of art. In particular, an artist may reduce the risk of failure because the amount of her share in revenues from the works of art does not depend solely on the commercial success of the particular works of art contributed by her, but, instead, on the likelihood that collectively, the works of art contributed by all the artists will be successfully commercialized.

Thus, the claimed subject matter envisions multiple artists, each of whom contributes at least one work of art to a collective investment fund. The amount of revenue distributed to each particular artist depends, at least in part, on the collective commercial success of all the artists in the fund.

There is no "clear and particular" motivation to combine the cited references

As explained by the Court of Appeals for the Federal Circuit, to prevent the use of hindsight based on the applicant's own disclosure to defeat patentability of the invention, the examiner is required to show motivation to combine the references that create the case of obviousness. *In re Rouffet*, 149 F.3d 1350, 1357; 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1998).

Furthermore, the showing of the motivation to combine the references so as to obtain the claimed subject matter must be "clear and particular." *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 63 USPQ2d 1374 at 1387 (Fed. Cir. 2002). As discussed below, in the present case, there is no such "clear and particular" motivation to combine the references.

The Office action acknowledges (at page 4, lines 2-4) that the Camelio application does not disclose multiple artists sharing revenues based on the collective commercial success of the works of art. However, the Office action relies on the Andrus et al. application for its disclosure relating to equity interests and warrants and alleges that it would have been obvious to combine the Camelio and Andrus et al. applications to obtain the subject matter of the pending claims. The alleged motivation for combining the references according to the Patent and Trademark Office (*see* Office action of November 12, 2004 at page 6) is "to provide an additional entitlement/right to participants in exchange for their participation in the fund and to ensure an adequate return on their investment." Applicant respectfully disagrees.

The Camelio application discloses the a situation in which a first artist will advertise or recommend another artist on the first artist's web site in exchange for a percentage of each sale of the second artist's work generated by the advertisement or recommendation:

In some related embodiments of Group I, a system and method for lesser-known artists or artists of different genres for increasing their exposure is provided. This allows the lesser-known artist or an artist of a different genre to build a larger fan base. Specifically, this embodiment may allow an artist of any level or genre

(preferably artists of a higher or more diverse profile) to advertise or recommend on a home page of the artist (or other web page) another artist to their existing fan base in exchange for a percentage of each sale generated by the recommendation. The sales are tracked by one or more variables contained in one or more links to the associated artist. Thus, any artist big or small can enjoy increased exposure and/or revenue by advertising or recommending fellow artists from any genre and collecting referral fees for each sale generated through the system.

(Page 4, par. 0075) (Underlining added)

Thus, according to the Camelio application, the purpose of the disclosed arrangement between the artists is to allow a first artist to obtain additional revenue through referral fees by advertising or recommending a second artist, and to allow the second artist (*e.g.*, a lesser-known artist) to receive increased exposure and to build a larger fan base. In other words, the Camelio application discloses a referral arrangement in which the motivations for both artists to participate are built into the disclosed arrangement: the first artist receives the possibility of increased revenue through referral fees in exchange for the second artist receiving increased exposure to potential buyers. There would have been no need to provide further motivation for the second artist to participate in the arrangement by sharing in the commercial success of *all* the works of art. To the contrary, allowing the second artist (*i.e.*, the lesser known artist) to receive a share of revenues generated by the works of the first artist would more likely have the undesired effect of *reducing* the first artist's motivation to participate in such an arrangement since the first artist would have to share a percentage of revenues generated through the sale of *his own* works.

Therefore, the fact that funds, equity interests and warrants were known from the Andrus et al. application is irrelevant. There would have been no "clear and particular" suggestion or motivation to use such concepts as disclosed in the Andrus application in combination with the disclosure of the Camelio application to obtain the subject matter of the pending claims.

Furthermore, claim 1 recites that a financial instrument is issued to each particular artist *in consideration for one or more works of art* contributed by that artist to the fund. As noted in

applicant's previous reply, the Office action (November 12, 2004 at page 5) implicitly misconstrued that feature when it stated that "Camelio discloses that the participants are given entitlements/rights in exchange for their financing." (Underlining added) According to the Camelio application, those "participants" are not artists who contribute works of art to a fund. Rather, they are persons who provide funding (*i.e.*, money) to the artist's projects or purchase certain specified rights in the artist's works of art. Even if some of the participants also happened to be artists, that would be irrelevant. Such participants are providing financing, not works of art as recited in the pending claims.

Therefore, even if there were some reason to combine the disclosures of the Camelio and Andrus et al. applications, at most that would suggest that a participant who provides *financial support* for an artist's project might receive an entitlement or right in the form of a warrant. Such participants who provide financial support are very different from artists who contribute works of art to a fund. For that additional reason, there is absolutely no motivation of the subject matter of the pending claims, including multiple artists each of whom contributes at least one work of art to a collective investment fund wherein the amount of revenue distributed to each particular artist depends, at least in part, on the collective commercial success of all the artists in the fund.

At least for the foregoing reasons, the rejections under 35 U.S.C. § 103 should be withdrawn.

Other evidence also support the non-obviousness of the claimed subject matter

The United States Supreme Court has recognized additional factors that should be considered in determining whether or not claimed subject matter is obvious under 35 U.S.C. § 103. The Supreme Court called those factors "secondary considerations." *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966), and other court opinions have called them "objective evidence of nonobviousness." *See, e.g., In re Rouffet*, 149 F.3d 1350, 1355 (1998). Those factors include the presence of a long-felt but unmet need for the invention and commercial success of the invention. *Id.*

Applicant submits copies of several published articles that relate to the Artist Pension Trust (APT) launched by MutualArt, Inc., the assignee of the pending patent application. The APT is based upon ideas disclosed and claimed in the pending application and, in particular, includes placing a percentage of revenues raised from works of art into a pool to be distributed to the participating artists. Copies of the following representative published articles are attached:

- (1) "Wall Street Lends Its Style to Artists in Need of Funds," The Washington Post, June 30, 2004 (Exhibit 1).
- (2) "What's Hot Now: A Pension Scheme for Artists," Forbes, August 19, 2004 (Exhibit 2).
- (3) "Art for money's sake," Finance & Economics, May 27, 2004 (Exhibit 3).
- (4) "Artists turn work into pensions," BBC news, April 18, 2005 (Exhibit 4).
- (5) "Artful scheme to draw a pension," The Herald, June 5, 2005 (Exhibit 5).
- (6) "A Retirement Plan for Artists," Art in America, September 1, 2004 (Exhibit 6).

Applicant does not suggest or imply that these are the only published articles relating to MutualArt, Inc. or the APT. The Examiner may wish to review additional information or articles, some of which may be found on the web site of MutualArt, Inc. at www.mutualart.com.

The attached published articles support the conclusion that the subject matter claimed in the pending application would not have been obvious.

Exhibit 1 (page 2), for example, refers to the fund as "a first-of-its kind pension fund for visual artists." As explained in that article:

MutualArt Inc. has established a first-of-its-kind pension fund for visual artists. [T]he trust is designed to eventually include 250 promising artists, each of whom must agree to contribute 20 works to the trust over 20 years. The works will be held for eventual sale, if and when they appreciate significantly in value.

When an artist's work is sold, the trust will credit 50 percent of the proceeds to the artist's individual retirement account. The rest will go into a pool for all participating artists, . . .

Another one of the articles recognizes that the pension fund for visual artists "certainly fills a gap." (Exhibit 3)

An individual who served as the former curator of Scotland's first independent show at the Venice Biennale and is involved in the APT explained that the fund "would bring a semblance of stability to the often shaky finances of professional artists and would also enable artists to receive some compensation when the value of their art rises over time." (Exhibit 5, page 1). That same individual observed that the "trust seems like a long overdue idea." (Exhibit 4)

Furthermore, in addition to artists, individuals with significant experience in the world of art are participating in the APT (*see, e.g.*, exhibits 1 and 6). For example, exhibit 1 (page 2) indicates that a former director of the San Francisco Museum of Modern Art and the Whitney Museum of American Art in New York is involved in the APT and apparently was "surprised no one had come up with the idea sooner." The APT also has received financial backing from third parties (*see* exhibit 2, page 1).

The foregoing information is objective evidence of non-obviousness and indicates that the subject matter of the pending claims addresses a long-felt but unmet need for the invention. The involvement in the APT of persons with experience in the art world, as well as the participation of artists and the financial backing of investors, is indicative of the commercial success of the invention.

For those additional reasons, applicant respectfully requests withdrawal of the rejections of claims 1-26 as obvious under 35 U.S.C. § 103.

Claims 1-14 are directed to statutory subject matter

The Office action rejected the method claims (1-14) as directed to non-statutory subject matter because they allegedly “do not claim a technological basis in the preamble and body of the claim” and because they allegedly could be interpreted to involve “no more than a manipulation of an abstract idea.” Applicant respectfully disagrees with those rejections.

Applicant submits that the final Office action simply reiterates the rejections raised in the previous Office action under 35 U.S.C. § 101, but fails to address any of the applicant's previous remarks regarding those rejections.

Applicant, therefore, reiterates and elaborates on its remarks below and requests that, if the Patent Office maintains the rejections of claims 1-14 under section 101, that it fully address applicant's remarks.

The Patent statute broadly states what inventions are patentable:

Whoever invents or discovers any new and useful process, . . . or any new and useful improvement thereof, may obtain a patent therefore, . . .

35 U.S.C. § 101. The Patent statute broadly defines “process” to mean “process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter or material. 35 U.S.C. § 100(b).

There is no statutory basis in the Patent statute for requiring that the subject matter of the claims have a “technological basis.” Nor is the undersigned aware of any precedent in the decisions of the U.S. Supreme Court or the Court of Appeals for the Federal Circuit for such a requirement. Instead, the Supreme Court has identified the following areas of subject matter that are unpatentable: laws of nature, natural phenomena, and abstract ideas. *See, e.g., State Street*

Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998) (citing Supreme Court decisions). As explained by the Federal Circuit:

The repetitive use of the expansive term “any” in § 101 shows Congress’s intent not to place any restrictions in the subject matter for which a patent may be obtained beyond those specifically recited in § 101.

Id. Therefore, the Patent Office’s attempt to place the additional requirement of “technological basis” on the type of subject matter considered to be statutory is contrary to the Patent statute, as well as contrary to the relevant case law. Nor does the phrase “technological basis,” find any support in the Constitution of the United States which gives the government the broad power to issue patents for inventions that “promote the progress of science and the useful arts.” As noted by the Office action, the decision cited at the bottom of page 2, *Ex Parte Bowman*, is non-precedential.

Applicant acknowledges that a process that merely manipulates an abstract idea may not be patentable. However, the Office action’s statement that claims 1-14 “may be interpreted . . . as involving no more than a manipulation of an abstract idea” is incorrect. For example, claim 1 recites “accepting” works of art into a fund, “issuing” financial instruments, “generating” revenues and “distributing” revenues. Those are concrete actions that may have significant legal ramifications; they are not merely the manipulation of an abstract idea or the manipulation of ideas by the human mind. It is difficult to see how a person of ordinary skill in the field would view those actions merely as abstract ideas taking place in the human mind.

Similarly, dependent claims 2-14 include additional features that recite concrete actions and are not merely abstract ideas. For example, claim 2 recites “receiving” works of art, and claim 12 recites “issuing” financial instruments.

In view of the foregoing remarks, applicant respectfully requests withdrawal of the rejections and allowance of all claims.

Conclusion

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

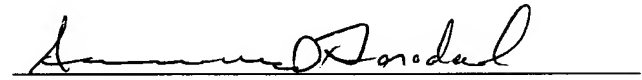
Applicant : Dan Galai et al.
Serial No. : 10/753,131
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Page : 17 of 17

Attorney's Docket No.: 16615-002001

Enclosed is a check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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Wall Street Lends Its Style to Artists In Need of Funds

Investors Ease the Struggle

By Ben White
Washington Post Staff Writer
Wednesday, June 30, 2004; Page A01

NEW YORK -- It was the biggest break of her career, an assignment to produce a sculpture big enough to fill 6,000 square feet of museum space, but artist Sharon Loudon didn't have the \$20,000 she needed to get the project started.

So Loudon and her husband, Vinson Valega, a jazz musician and commodities trader, borrowed an idea from Wall Street.

They drew up a prospectus and began soliciting investors to buy shares in the sculpture, which would be put up for sale after its exhibition at the Kemper Museum of Contemporary Art in Kansas City, Mo.

Loudon and Valega are part of a movement that gives new meaning to "the art of the deal" -- an effort to remove some of the struggle from the lives of struggling artists by harnessing techniques more familiar to Wall Street than New York's Museum Mile.

"We could have put it all on credit cards and gone into debt," said Valega, describing the financial style that frequently accompanies a life in the arts. "But I thought, this is going to be really valuable some day -- let's collateralize it."

Loudon and Valega, both of whom grew up in Olney, called previous collectors of Loudon's work, easily gathering enough money to complete the piece. This spring, she sold it to a corporate buyer, earning investors returns of between 50 and 75 percent. Investments ranged from \$200 to several thousand dollars, and the minimum return anyone made was about \$100.

The sculpture -- 850 miles of black and gray monofilament fishing line bundled into individual pieces meant to evoke a natural landscape -- belongs to auto insurance company Progressive Corp., which maintains a large contemporary art collection. Called "The Attenders," it hangs above the foyer of the company's call center in Phoenix.

"Some people like it, some hate it," Loudon said of employee reaction. "But as long as it gets people talking, that's what matters."

Loudon said that when she began telling investors about the size of their returns after the sculpture was sold, many begged her to keep the money for her next venture.

"They just freaked out," she said. Loudon said she has been inundated with phone calls from investors

eager to get in on her next project and artists interested in her novel fundraising approach. She is getting ready to solicit a second round of investors for an ambitious animation project.

Instead of resigning themselves to living and dying in poverty, Loudon and other artists are beginning to experiment with financial innovation, in some cases to find seed money for their work and in others to help provide financial stability for the future.

In New York, for instance, MutualArt Inc. has established a first-of-its-kind pension fund for visual artists. Launched this spring, the trust is designed to eventually include 250 promising artists, each of whom must agree to contribute 20 works to the trust over 20 years. The works will be held for eventual sale, if and when they appreciate significantly in value.

When an artist's work is sold, the trust will credit 50 percent of the proceeds to the artist's individual retirement account. The rest will go into a pool for all participating artists, with a cut going to cover administrative costs. After 20 years, artists will begin receiving income from the pool.

Sebastiaan Bremer, 34, a Brooklyn resident who etches intricate, ethereal drawings onto photographs, said he accepted an invitation to join the trust to ensure a more stable future for himself, his wife and their two young children.

Bremer supports his family with his work now, but said the fund will help reduce the risk associated with the shifting tastes of the contemporary art market, while perhaps helping put his kids through college.

"A lot of people have been talking about doing this sort of thing for many years," he said. "But it's hard for people to trust each other, particularly people as individually minded as artists. . . . I think it helped that it's being organized by such respected people."

One of those is David A. Ross, a former director of the San Francisco Museum of Modern Art and the Whitney Museum of American Art in New York. Ross, executive vice president of MutualArt, said he was surprised no one had come up with the idea sooner.

"We recognize that artists create an enormous amount of value for society," he said. "We wanted to find a way where artists could participate as a group in the value they are creating in the culture." Once the first fund reaches 250 members, organizers hope to start new funds in major cities around the world.

The idea for the trust is hardly a pie-in-the-sky scheme dreamed up by the financially naive. Its structure is in part the creation of Dan Galai, an Israeli academic who has taught at the University of Chicago and the University of California at Berkeley.

Pamela Auchincloss, director of the New York trust, said just one-half of 1 percent of the trust's membership would need to achieve significant commercial success to ensure a decent retirement package for all members. "It's designed in a highly conservative way," she said.

Both Auchincloss and Ross said they have received many inquiries about setting up similar trusts for other freelance fields. They said that as long as the discipline produces work that can increase in value over time and the process used to select participants is rigorous, the concept should translate to other media, including photography.

Julie Ward, an independent curator working on a book about patronage, described Loudén's approach as a postmodern spin on a process that dates at least to the Medici family's support for the arts in 15th- and 16th-century Florence.

She said the multiple-investor approach could remove some potential drawbacks of more traditional patronage, in which an artist can become beholden to the tastes and whims of a single wealthy collector while having little control over the art's fate.

"Positive patronage creates good energy, good back and forth, between the artist, the patrons and the audience," she said. "As we went through the 20th century, patronage became more a matter of, 'I'll give you money, then I own [the work].' It got out of sync."

James McLaren, an investment banker who put money into "The Attenders," said he was attracted by the structure of the deal: If the piece had failed to sell, each investor would have received part of the sculpture, which could easily be broken into pieces. But he said the real reason he put up money was the thrill of helping an artist.

"To me there is a lot of psychic pleasure in trying to identify and support people who are in the earlier stages of their career," he said.

Louden said many of her investors had a similar reaction, at least in part because she began raising money not long after the Sept. 11, 2001, terrorist attack on the World Trade Center. The attack drove Loudén and her husband out of their apartment in Lower Manhattan for two weeks and shuttered Loudén's studio.

"I think after 9/11 it made people feel better to be involved in a project like this," she said. "People have mostly recovered from that time, but they still want [to invest] because of that creative feeling."

While Loudén's approach appears fairly novel, the practice of "securitizing" art is not new. One of the most famous examples is the "Bowie Bond."

In 1997, pop star David Bowie considered selling his extensive catalog of previous albums. But with help from manager William Zysblat and financier David Pullman, Bowie decided instead to sell bonds backed by future revenue from his songs. The bond sale raised \$55 million for Bowie and allowed him to retain control of his work.

Zysblat said that while the idea seemed exotic at the time, it was actually quite simple. Bowie's catalog had demonstrated consistent sales and predictable annual earnings, making the bonds a fairly low-risk investment. Bowie bonds carry a 7.9 percent interest rate and have never missed a payment. They are owned entirely by Prudential Insurance Co. and not publicly traded.

Pullman said that since 1997 he has successfully sold bonds backed by royalties from songs in the catalogs of Motown Records, James Brown, Ashford & Simpson and the Isley Brothers.

And the phenomenon could soon move beyond big bond sales designed for institutional investors. New York financier Robert D'Loren, who along with Pullman has arranged for companies to sell bonds backed by intellectual property, is preparing to sell stock to the public that will pay dividends based on royalties on such diverse things as song lyrics and hamburger recipes.

What's Hot Now: A Pension Scheme For Artists



08/19/2004 , Forbes

A new company called MutualArt has launched the Artist Pension Trust (APT), the first pension program for visual artists. The scheme offers emerging and mid-career artists a chance to place their works in a collective as an investment. The work will be held for up to two decades, then sold and a percentage of the proceeds will be paid into the retirement accounts of participating artists.

The company has ambitious plans to create a string of non-profit trusts around the world, beginning in New York then expanding to Los Angeles, London, Berlin, Beijing, Tokyo and Moscow. In the process, they say, they could create a billion-dollar empire controlling vast quantities of art.

MutualArt's principals are Israeli businessman Moti Shniberg, who founded the product-coding company Image ID; Hebrew University business professor Dan Galai, a specialist in risk diversification strategy who manages an Israeli hedge fund called Sigma; and David A. Ross, former director of the Whitney Museum and the San Francisco Museum of Modern Art.

Thus far, they have raised \$2 million from Israeli and U.S. investors to get the program off the ground. MutualArt's advisory board includes artists John Baldessari and Kiki Smith, Columbia University School of the Arts dean Bruce W. Ferguson, Morgan Stanley (nyse: MWD - news - people) Mergers & Acquisitions co-chairman Raymond McGuire, art historian Irving Sandler, and Wharton School of Business professor Jerry Wind.

Mr. Shniberg hatched the idea when he learned that financial insecurity was a common concern among young artists in the U.S., many of whom do not have the safety net of corporate retirement plans, do not enjoy the benefits of *droit du suite* and cannot deduct the fair market value of their work donated to charities.

"Artists create an enormous amount of wealth in their lives," observes Mr. Ross, "and this program is designed to allow them to participate in this wealth."

Here is how it works: Mr. Ross and advisors will create a series of regional trusts, each with a director and selection committee who will invite 250 artists to join the scheme. Each artist will agree to invest 20 works of art over a 20-year period, according to a prescribed schedule. The works will be held by the trust in open storage, available for loan to museums and galleries and included in trust-initiated exhibitions and publications intended to advance the artists' careers.

A sales team--yet to be assembled--will sell the works when they believe they can achieve the highest returns, working with each artist's gallery or through private-treaty sales, auctions and secondary-market dealers. Revenues will be divided as follows: 40% will go into the artist's individual retirement account, 40% will go into a group fund shared equally by the 250 members of the trust, and 20% will go to MutualArt which bears all costs of storing, insuring and managing the program.

Works without market value will be returned to the artist, agent or heirs or donated to a non-profit institution. The funds realized will be managed by an investment firm, and each artist will have control over how his or her money is invested. Artists will start to receive income 20 years after the inception of their trust.

"If two artists out of 250 achieve serious 'Chuck Close-level' success, that particular regional trust will have enough funds to succeed," says Mr. Ross, "But we feel fairly confident that our success rate will probably be more in the neighborhood of 5% and could be as high as 10%."

Star artists will subsidize less successful ones, but by allocating half of the proceeds for sales to each artist's own account, the program also rewards members according to their market success.

As director of the New York trust, Mr. Ross has hired art consultant and gallerist Pamela Auchincloss and appointed a selection committee that includes himself, curator Clarissa Dalrymple and dealers Jeffrey Deitch, Jack Tilton and Simon Watson. They set up the New York trust quietly in December and have just announced the first two dozen artist members, including Chris Mir, Lamar Peterson and Chloé Piene, whose drawings were included in the recent Whitney Biennial. Mr. Ross intends to add 50 artists per year until he reaches 250.

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FINANCE & ECONOMICS

Artists' pensions

Art for money's sake

May 27th 2004

From The Economist print edition

A new retirement scheme for artists, with a twist

FROM Vincent van Gogh to Henri Rousseau, artists have a long and honourable tradition of dying penniless. Their modern counterparts would rather not. This week MutualArt, a New York-based group of academics and museum experts, announced the start of the first-ever pension trust for visual artists. There is a twist: the contributions of those invited to join the scheme will be in the form of paintings and sculptures—20 works over 20 years. Their sale is supposed to provide each artist with three decades of retirement payouts.

The scheme certainly fills a gap. Artists are even worse off than actors, says Andras Szanto of the National Arts Journalism programme at Columbia University. Actors can get access to pensions through unions. Artists usually fall outside traditional retirement schemes because they rarely stay with a single gallery or dealer for very long. Most rely on teaching, day jobs or rich spouses in their dotage.

But investing in art is risky even if you know a thing or two about it. For every Jasper Johns, whose paintings of flags and symbols command top prices at auctions, there are dozens whose flags, for some reason, do not. The trusts' organisers are trying to reduce the risk of flops by allowing only promising artists—whose work is already selling—to join. Membership will be capped at 250 per trust (the first, in New York, has so far signed up 19). Each artist's payout will come half from the pooled sale of works, and half from sales of his own work, so nobody will get a free ride. Once the works are sold, the proceeds will be invested in securities chosen by the artists.

There are costs—the works must be stored or exhibited, new applicants to the trust need to be screened and so on. Dan Galai, an Israeli academic who helped found MutualArt, says all this should cost each trust about \$250,000 a year. MutualArt will pay half such costs after taking a 20% cut from the sale of each work of art, which is where it makes its money.

British Rail famously invested some of its pension scheme in Old Masters and other classics in the 1970s. The art brought a decent enough return of 4% above inflation. But it sold its last work in 2003 in part because prices for art had become so high. To enjoy a prosperous old age, the artists signing up must hope they stay that way—and that one at least of their number gets more recognition than Van Gogh ever did before he died.

2

Artists turn works into pensions

A pension scheme has been set up to help artists to save while in the early stages of their career.



04/18/2005 , BBC News UK Edition

The Artists Pension Trust enables artists to save works rather than money, in the hope they will increase in value.

Each artist will invest 20 works over a 20-year period, with net profits from future sales of the work directed straight back to the artist.

The works will still be available for viewing, lending and showing.

Strong collection

The trust will consist of 250 artists, selected at the rate of about 50 per year over five years.

Trust director Kay Pallister said: "The contemporary art world is a fast-paced field, exhibitions last a few weeks and the turnover of art works continues to accelerate, making it very difficult for artists to hold on to even one or two works per year.

"I know many artists who have sold every artwork, early on in their careers, for prices in the region of £1,000 to £5,000 and then their profile has grown. Those formative works are re-sold for fifty times that amount without the artist seeing a penny of that appreciation."

She added: "The trust seems like a long overdue idea. In the short term, emerging artists can benefit from being part of a strong collection, that will build over time to be of true significance in its own right.

"More importantly they can take some control over their work and make its market value appreciation benefit them, not just the canny speculative collectors."

Artful scheme to draw a pension

The Herald

05/16/2005 , The Herald

Four of Scotland's leading modern artists are among the first to join a scheme which builds pensions through the hoarding of their works.

Rosalind Nashashibi, winner of the Beck's Futures prize, Martin Boyce, Lucy Skaer and Richard Wright have signed up to an investment initiative purely for artists.

Called the Artist Pension Trust, the scheme aims not only to provide a measure of financial security in the often precarious profession of visual art but will steadily build one of the most comprehensive modern-art collections in Europe. The trust, an extension of a US scheme running in New York and Los Angeles, is invested in by artists, but not with money. Instead they give many works of art to APT over a 20-year period.

The net profits from the sale of the works in the future are then divided: a share is given to the trust accounts, a share to the artist and a share to the other artists involved in the scheme.

The trust will eventually consist of 250 leading artists, selected at the rate of about 50 per year over five years, and up to 5000 works of art.

Kay Pallister, the director of the scheme, is based in Glasgow and London. She was the curator of Zenomap, Scotland's first independent show at the Venice Biennale.

She said the scheme would bring a semblance of stability to the often shaky finances of professional artists and would also enable artists to receive some compensation when the value of their art rises over time.

The irregular and mercurial nature of the art business has traditionally made it difficult for artists to pay into a traditional pension fund, or save for the future. Their income is often erratic and channelled back into further production of art works.

For every millionaire modern artist such as Damien Hirst, there are many who live on low incomes.

"The contemporary art world is a fast-paced field, exhibitions last a few weeks and the turn-over of art works continues to accelerate, making it very difficult for artists to hold on to even one or two works per year," Ms Pallister said. "I know many artists who have sold every artwork, early on in their careers, for prices in the region of £1000 to £5000 and now within, say, seven to maybe 10 years, their profile has grown and those formative works are re-sold for 50 times that amount – without the artist seeing a penny of that appreciation.

"In the short term, emerging artists can benefit from being part of a strong collection that will build over time to be of true significance in its own right. But more importantly they can take some control over their work and make its market-value appreciation benefit them, not just the canny speculative collectors."

While any artist may apply to APT, invitation to participate in the trust follows a curatorial selection process.

The panel includes a series of gallery and museum curators, who nominate and select the artists involved to participate. There is also an international advisory panel including John Baldessari and Kiki Smith, the US artists; Michael Craig Martin, the British artist; and Jan Debbaut, the head of the Tate collection.

The art given by the artists will be stored in "museum quality facilities" and will also be available for viewing, lending and showing to suitable museums and gallery exhibits.

A specialised art-selling team will consider the best time to sell each work on a case-by-case basis.

It is envisaged that works may begin to be returned to the market anywhere between eight and 20 years from the beginning of the trust, depending on each artist's particular standing in the market.

- Phil Miller, arts correspondent

A Retirement Plan for Artists



09/01/2004 , Art in America

A new trust has been established with the aim of providing emerging and midcareer artists with a nest egg for their later years. Called the Artist Pension Trust, the scheme is the brainchild of entrepreneur Moti Shniberg. It was launched under MutualArt, which is headed by Shniberg along with Dan Galai, a hedge-fund manager and finance professor at Hebrew University and David A. Ross, former director of the Whitney Museum and San Francisco Museum of Modern Art. Serving on the advisory board are artists John Baldessari and Kiki Smith, art historian Irving Sandler, dean of Columbia University's Graduate School of Fine Arts Bruce Ferguson, Morgan Stanley executive and art collector Raymond McGuire, and Wharton School Professor Jerry Wind.

Over a 20-year period, each artist will invest 20 works, which will be made available for museum shows or kept in storage. The works will be sold when the return looks most promising for a given artist, with 40 percent going into the artist's private retirement account, 40 percent going into a group fund divided among all the members, and 20 percent to MutualArt. The planners predict that the value of works in the fund will appreciate, with the payout for individual artists ranging from \$500,000 to \$1.5 million. The estimate is based on the funds projected overall value and the proportionate work of each artist's work.

In addition to a West Coast fund in the works, plans call for a series of trusts to be established in international locales, such as London (serving Western Europe), Berlin (for Eastern and Central Europe) and Asia and South America. A selection committee of artists and art professionals will meet quarterly to select new artists for the trusts. Among the 22 individuals currently participating in the New York trust, which serves the East Coast, are Sebastiaan Bremer, William Cordova, Jules de Balincourt, Anthony Goicolea, Chloe Piene, Aida Ruilova, Zak Smith, and Kehinde Wiley. The selection committee for New York, directed by art advisor Pamela Auchincloss, includes Ross, curators Clarissa Dalrymple and Simon Watson, and dealers Jeffrey Deitch and Jack Tilton.

Each fund will eventually have 250 artists, with about 50 added each year. There are no age limits, but most artists will be under 40 so that they will be likely to fulfill their 20-year commitment.